

1 ANDRÉ BIROTTÉ JR.
2 United States Attorney
3 DENNISE D. WILLETT
4 Assistant United States Attorney
5 Chief, Santa Ana Branch Office
6 BRETT A. SAGEL (CBN: 243918)
7 Assistant United States Attorney
Ronald Reagan Federal Building
411 West Fourth Street, Suite 8000
Santa Ana, California 92701
Telephone: (714) 338-3598
Facsimile: (714) 338-3708
Email: Brett.Sagel@usdoj.gov

8 Attorneys for Plaintiff
UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

No. SA CR 13-179 (A) -DOC

12 Plaintiff,

13 PLEA AGREEMENT FOR DEFENDANT
KEVIN KHANH TUAN DO

v.

14 KEVIN KHANH TUAN DO,

15 Defendant.

16
17 1. This constitutes the plea agreement between defendant KEVIN
18 KHANH TUAN DO ("defendant") and the United States Attorney's Office
19 for the Central District of California (the "USAO") in the above-
captioned case. This agreement is limited to the USAO and cannot
21 bind any other federal, state, local, or foreign prosecuting,
enforcement, administrative, or regulatory authorities.

23 DEFENDANT'S OBLIGATIONS

24 2. Defendant agrees to:

25 a. At the earliest opportunity requested by the USAO and
26 provided by the Court, appear and plead guilty to count three of the
27 first superseding indictment in United States v. DO et al., SA CR 13-

1 179 (A) -DOC, which charges defendant with Making a False Statement to
2 a Federal Agency, in violation of 18 U.S.C. § 1001(a).

3 b. Not contest facts agreed to in this agreement.

4 c. Abide by all agreements regarding sentencing contained
5 in this agreement.

6 d. Appear for all court appearances, surrender as ordered
7 for service of sentence, obey all conditions of any bond, and obey
8 any other ongoing court order in this matter.

9 e. Not commit any crime; however, offenses that would be
10 excluded for sentencing purposes under United States Sentencing
11 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
12 within the scope of this agreement.

13 f. Be truthful at all times with Pretrial Services, the
14 United States Probation Office, and the Court.

15 g. Pay the applicable special assessment at or before the
16 time of sentencing unless defendant lacks the ability to pay and
17 prior to sentencing submits a completed financial statement on a form
18 to be provided by the USAO.

19 THE USAO'S OBLIGATIONS

20 3. The USAO agrees to:

21 a. Not contest facts agreed to in this agreement.

22 b. Abide by all agreements regarding sentencing contained
23 in this agreement.

24 c. At the time of sentencing, move to dismiss the
25 remaining counts of the indictment as against defendant. Defendant
26 agrees, however, that at the time of sentencing the Court may
27 consider any dismissed charges in determining the applicable

1 Sentencing Guidelines range, the propriety and extent of any
2 departure from that range, and the sentence to be imposed.

3 d. At the time of sentencing, provided that defendant
4 demonstrates an acceptance of responsibility for the offense up to
5 and including the time of sentencing, recommend a two-level reduction
6 in the applicable Sentencing Guidelines offense level, pursuant to
7 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
8 additional one-level reduction if available under that section.

NATURE OF THE OFFENSE

10 4. Defendant understands that for defendant to be guilty of
11 the crime charged in count three, that is, Making a False Statement
12 to a Federal Agency, in violation of Title 18, United States Code,
13 Section 1001(a), the following must be true: (1) the defendant made a
14 false, fictitious, or fraudulent statement or representation in a
15 matter within the jurisdiction of the Federal Bureau of
16 Investigation; (2) the defendant acted willfully; that is,
17 deliberately and with knowledge that the statement or representation
18 was untrue; and (3) the statement or representation was material to
19 the activities or decisions of the Federal Bureau of Investigation;
20 that is, it had a natural tendency to influence, or was capable of
21 influencing, the agency's decisions or activities.

PENALTIES

23 5. Defendant understands that the statutory maximum sentence
24 that the Court can impose for a violation of Title 18, United States
25 Code, Section 1001(a), is: 5 years imprisonment; a 3-year period of
26 supervised release; a fine of \$100,000 or twice the gross gain or
27 gross loss resulting from the offense, whichever is greatest; and a
28 mandatory special assessment of \$100.

1 6. Defendant understands that supervised release is a period
2 of time following imprisonment during which defendant will be subject
3 to various restrictions and requirements. Defendant understands that
4 if defendant violates one or more of the conditions of any supervised
5 release imposed, defendant may be returned to prison for all or part
6 of the term of supervised release authorized by statute for the
7 offense that resulted in the term of supervised release, which could
8 result in defendant serving a total term of imprisonment greater than
9 the statutory maximum stated above.

10 7. Defendant understands that, by pleading guilty, defendant
11 may be giving up valuable government benefits and valuable civic
12 rights, such as the right to vote, the right to possess a firearm,
13 the right to hold office, and the right to serve on a jury.
14 Defendant understands that once the court accepts defendant's guilty
15 plea, it will be a federal felony for defendant to possess a firearm
16 or ammunition. Defendant understands that the conviction in this
17 case may also subject defendant to various other collateral
18 consequences, including but not limited to revocation of probation,
19 parole, or supervised release in another case and suspension or
20 revocation of a professional license. Defendant understands that
21 unanticipated collateral consequences will not serve as grounds to
22 withdraw defendant's guilty plea.

23 8. Defendant understands that, if defendant is not a United
24 States citizen, the felony conviction in this case may subject
25 defendant to: removal, also known as deportation, which may, under
26 some circumstances, be mandatory; denial of citizenship; and denial
27 of admission to the United States in the future. The court cannot,
28 and defendant's attorney also may not be able to, advise defendant

1 fully regarding the immigration consequences of the felony conviction
2 in this case. Defendant understands that unexpected immigration
3 consequences will not serve as grounds to withdraw defendant's guilty
4 plea.

5 FACTUAL BASIS

6 9. Defendant admits that defendant is, in fact, guilty of the
7 offense to which defendant is agreeing to plead guilty. Defendant
8 and the USAO agree to the statement of facts provided below and agree
9 that this statement of facts is sufficient to support a plea of
10 guilty to the charge described in this agreement and to establish the
11 Sentencing Guidelines factors set forth in paragraph 11 below but is
12 not meant to be a complete recitation of all facts relevant to the
13 underlying criminal conduct or all facts known to either party that
14 relate to that conduct.

15 On or about August 30, 2013, in Orange County, within the
16 Central District of California, in a matter within the jurisdiction
17 of the executive branch of the government of the United States,
18 namely, the Federal Bureau of Investigation (hereinafter "FBI"),
19 defendant DO knowingly and willfully made a materially false,
20 fictitious, and fraudulent statement and representation, in that
21 defendant DO stated that defendant DO never discussed with L.P.
22 loaning money to anyone; whereas, in truth and in fact, as defendant
23 DO then well knew, defendant DO discussed with L.P. loaning money to
24 other individuals.

25 SENTENCING FACTORS

26 10. Defendant understands that in determining defendant's
27 sentence the Court is required to calculate the applicable Sentencing
28 Guidelines range and to consider that range, possible departures

1 under the Sentencing Guidelines, and the other sentencing factors set
2 forth in 18 U.S.C. § 3553(a). Defendant understands that the
3 Sentencing Guidelines are advisory only, that defendant cannot have
4 any expectation of receiving a sentence within the calculated
5 Sentencing Guidelines range, and that after considering the
6 Sentencing Guidelines and the other § 3553(a) factors, the Court will
7 be free to exercise its discretion to impose any sentence it finds
8 appropriate up to the maximum set by statute for the crime of
9 conviction.

10 11. Defendant and the USAO agree to the following applicable
11 Sentencing Guidelines factors:

12 Base Offense Level: 6 U.S.S.G. § 2B1.1(a)(2)

13 Defendant and the USAO reserve the right to argue that additional
14 specific offense characteristics, adjustments, and departures under
15 the Sentencing Guidelines are appropriate.

16 12. Defendant understands that there is no agreement as to
17 defendant's criminal history or criminal history category.

18 13. Defendant and the USAO reserve the right to argue for a
19 sentence outside the sentencing range established by the Sentencing
20 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
21 (a)(2), (a)(3), (a)(6), and (a)(7).

WAIVER OF CONSTITUTIONAL RIGHTS

23 14. Defendant understands that by pleading guilty, defendant
24 gives up the following rights:

- 25 a. The right to persist in a plea of not guilty.
26 b. The right to a speedy and public trial by jury.
27 c. The right to be represented by counsel - and if
28 necessary have the court appoint counsel -- at trial. Defendant

1 understands, however, that, defendant retains the right to be
2 represented by counsel -- and if necessary have the court appoint
3 counsel -- at every other stage of the proceeding.

4 d. The right to be presumed innocent and to have the
5 burden of proof placed on the government to prove defendant guilty
6 beyond a reasonable doubt.

7 e. The right to confront and cross-examine witnesses
8 against defendant.

9 f. The right to testify and to present evidence in
10 opposition to the charges, including the right to compel the
11 attendance of witnesses to testify.

12 g. The right not to be compelled to testify, and, if
13 defendant chose not to testify or present evidence, to have that
14 choice not be used against defendant.

15 h. Any and all rights to pursue any affirmative defenses,
16 Fourth Amendment or Fifth Amendment claims, and other pretrial
17 motions that have been filed or could be filed.

WAIVER OF APPEAL OF CONVICTION

19 15. Defendant understands that, with the exception of an appeal
20 based on a claim that defendant's guilty plea was involuntary, by
21 pleading guilty defendant is waiving and giving up any right to
22 appeal defendant's conviction on the offense to which defendant is
23 pleading guilty.

LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

25 16. Defendant agrees that, provided the Court does not impose a
26 term of imprisonment on the count of conviction, defendant gives up
27 the right to appeal all of the following: (a) the procedures and
28 calculations used to determine and impose any portion of the

1 sentence; (b) the term of imprisonment imposed by the Court; (c) the
2 fine imposed by the court, provided it is within the statutory
3 maximum; (d) the term of probation or supervised release imposed by
4 the Court, provided it is within the statutory maximum; and (e) any
5 of the following conditions of probation or supervised release
6 imposed by the Court: the conditions set forth in General Orders 318,
7 01-05, and/or 05-02 of this Court; the drug testing conditions
8 mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and
9 drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

10 17. The USAO gives up its right to appeal any portion of the
11 sentence.

RESULT OF WITHDRAWAL OF GUILTY PLEA

13 18. Defendant agrees that if, after entering a guilty plea
14 pursuant to this agreement, defendant seeks to withdraw and succeeds
15 in withdrawing defendant's guilty plea on any basis other than a
16 claim and finding that entry into this plea agreement was
17 involuntary, then (a) the USAO will be relieved of all of its
18 obligations under this agreement; and (b) should the USAO choose to
19 pursue any charge that was either dismissed or not filed as a result
20 of this agreement, then (i) any applicable statute of limitations
21 will be tolled between the date of defendant's signing of this
22 agreement and the filing commencing any such action; and
23 (ii) defendant waives and gives up all defenses based on the statute
24 of limitations, any claim of pre-indictment delay, or any speedy
25 trial claim with respect to any such action, except to the extent
26 that such defenses existed as of the date of defendant's signing this
27 agreement.

RESULT OF VACATUR, REVERSAL OR SET-ASIDE

19. Defendant agrees that if the count of conviction is vacated, reversed, or set aside, both the USAO and defendant will be released from all their obligations under this agreement.

EFFECTIVE DATE OF AGREEMENT

20. This agreement is effective upon signature and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney.

BREACH OF AGREEMENT

10 21. Defendant agrees that if defendant, at any time after the
11 signature of this agreement and execution of all required
12 certifications by defendant, defendant's counsel, and an Assistant
13 United States Attorney, knowingly violates or fails to perform any of
14 defendant's obligations under this agreement ("a breach"), the USAO
15 may declare this agreement breached. All of defendant's obligations
16 are material, a single breach of this agreement is sufficient for the
17 USAO to declare a breach, and defendant shall not be deemed to have
18 cured a breach without the express agreement of the USAO in writing.
19 If the USAO declares this agreement breached, and the Court finds
20 such a breach to have occurred, then: (a) if defendant has previously
21 entered a guilty plea pursuant to this agreement, defendant will not
22 be able to withdraw the guilty plea, and (b) the USAO will be
23 relieved of all its obligations under this agreement.

24 22. Following the Court's finding of a knowing breach of this
25 agreement by defendant, should the USAO choose to pursue any charge
26 that was either dismissed or not filed as a result of this agreement,
27 then:

1 a. Defendant agrees that any applicable statute of
2 limitations is tolled between the date of defendant's signing of this
3 agreement and the filing commencing any such action.

4 b. Defendant waives and gives up all defenses based on
5 the statute of limitations, any claim of pre-indictment delay, or any
6 speedy trial claim with respect to any such action, except to the
7 extent that such defenses existed as of the date of defendant's
8 signing this agreement.

9 c. Defendant agrees that: (i) any statements made by
10 defendant, under oath, at the guilty plea hearing (if such a hearing
11 occurred prior to the breach); (ii) the agreed to factual basis
12 statement in this agreement; and (iii) any evidence derived from such
13 statements, shall be admissible against defendant in any such action
14 against defendant, and defendant waives and gives up any claim under
15 the United States Constitution, any statute, Rule 410 of the Federal
16 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
17 Procedure, or any other federal rule, that the statements or any
18 evidence derived from the statements should be suppressed or are
19 inadmissible.

20 COURT AND PROBATION OFFICE NOT PARTIES

21 23. Defendant understands that the Court and the United States
22 Probation Office are not parties to this agreement and need not
23 accept any of the USAO's sentencing recommendations or the parties'
24 agreements to facts or sentencing factors.

25 24. Defendant understands that both defendant and the USAO are
26 free to: (a) supplement the facts by supplying relevant information
27 to the United States Probation Office and the Court, (b) correct any
28 and all factual misstatements relating to the Court's Sentencing

1 Guidelines calculations and determination of sentence, and (c) argue
2 on appeal and collateral review that the Court's Sentencing
3 Guidelines calculations and the sentence it chooses to impose are not
4 error, although each party agrees to maintain its view that the
5 calculations in paragraph 11 are consistent with the facts of this
6 case. While this paragraph permits both the USAO and defendant to
7 submit full and complete factual information to the United States
8 Probation Office and the Court, even if that factual information may
9 be viewed as inconsistent with the facts agreed to in this agreement,
10 this paragraph does not affect defendant's and the USAO's obligations
11 not to contest the facts agreed to in this agreement.

12 25. Defendant understands that even if the Court ignores any
13 sentencing recommendation, finds facts or reaches conclusions
14 different from those agreed to, and/or imposes any sentence up to the
15 maximum established by statute, defendant cannot, for that reason,
16 withdraw defendant's guilty plea, and defendant will remain bound to
17 fulfill all defendant's obligations under this agreement. Defendant
18 understands that no one -- not the prosecutor, defendant's attorney,
19 or the Court -- can make a binding prediction or promise regarding
20 the sentence defendant will receive, except that it will be within
21 the statutory maximum.

NO ADDITIONAL AGREEMENTS

23 26. Defendant understands that, except as set forth herein,
24 there are no promises, understandings, or agreements between the USAO
25 and defendant or defendant's attorney, and that no additional
26 promise, understanding, or agreement may be entered into unless in a
27 writing signed by all parties or on the record in court.

1 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

2 27. The parties agree that this agreement will be considered
3 part of the record of defendant's guilty plea hearing as if the
4 entire agreement had been read into the record of the proceeding.

5 AGREED AND ACCEPTED

6 UNITED STATES ATTORNEY'S OFFICE
7 FOR THE CENTRAL DISTRICT OF
8 CALIFORNIA

9 ANDRÉ BIROTTÉ JR.

10 United States Attorney

11 BRETT A. SAGEL

12 Assistant United States Attorney

13 6/13/14

14 Date

15 KEVIN KHANH TUAN DO

16 Defendant

17 06/13/14

18 Date

19 SHAUN KHOJAYAN

20 Attorney for Defendant

21 KEVIN KHANH TUAN DO

22 6/13/14

23 Date

24 CERTIFICATION OF DEFENDANT

25 I have read this agreement in its entirety. I have had enough
26 time to review and consider this agreement, and I have carefully and
27 thoroughly discussed every part of it with my attorney. I understand
28 the terms of this agreement, and I voluntarily agree to those terms.
I have discussed the evidence with my attorney, and my attorney has
advised me of my rights, of possible pretrial motions that might be
filed, of possible defenses that might be asserted either prior to or
at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a),

1 of relevant Sentencing Guidelines provisions, and of the consequences
2 of entering into this agreement. No promises, inducements, or
3 representations of any kind have been made to me other than those
4 contained in this agreement. No one has threatened or forced me in
5 any way to enter into this agreement. I am satisfied with the
6 representation of my attorney in this matter, and I am pleading
7 guilty because I am guilty of the charges and wish to take advantage
8 of the promises set forth in this agreement, and not for any other
9 reason.

10 

11
12 KEVIN KHANH TUAN DO
Defendant

13
14 

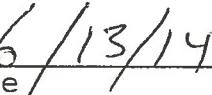
15 Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

16 I am KEVIN KHANH TUAN DO's attorney. I have carefully and
17 thoroughly discussed every part of this agreement with my client.
18 Further, I have fully advised my client of his rights, of possible
19 pretrial motions that might be filed, of possible defenses that might
20 be asserted either prior to or at trial, of the sentencing factors
21 set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
22 provisions, and of the consequences of entering into this agreement.
23 To my knowledge: no promises, inducements, or representations of any
24 kind have been made to my client other than those contained in this
25 agreement; no one has threatened or forced my client in any way to
26 enter into this agreement; my client's decision to enter into this
27 agreement is an informed and voluntary one; and the factual basis set
28

1 forth in this agreement is sufficient to support my client's entry of
2 a guilty plea pursuant to this agreement.

3
4 
5 SHAUN KHOJAYAN
6 Attorney for Defendant
7 KEVIN KHANH TUAN DO

8
9 
10 Date
11
12

13 I, Phiko Nguyen, have translated this ^{PN}
14 document from English into Vietnamese, and ^{PN}
15 from Vietnamese ^{PN}
16
17

18 I, Phiko Nguyen, am fluent in the written
19 and spoken Vietnamese and English languages.
20 I accurately translated this entire agreement
21 from English to Vietnamese to defendant on this
22 date
23

24 
25 Phiko Nguyen
26 Court Interpreter
27
28

29 6/13/14